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April 21, 1994

Mr. William F. Caton
Acting Secretary
Office of the Secretary
Federal Communications Commission
Washington, D. C. 20554

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Dear Mr. Caton:

Enclosed please find one original and nine copies of comments by Calcell Wireless, Inc., due April 22, 1994 in response to FCC GEN Docket 90-314. Comments addressed to the FCC PCS Task Force.

Sincerely,

Albert H Frazier Jr

Albert H. Frazier, Jr.
President & CEO

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BEFORE THE

Federal Communications Commission

Washington, D.C. 20554

In the Matter of	)	Docket No. 90-314
	)	
Comments Regarding Panel Discussions held by the Commission PCS Task Force	)	

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To: The Commission April 22, 1994

COMMENTS OF CALCELL WIRELESS, INC.

SUMMARY

Calcell Wireless, Inc. (Calcell) hereby respectfully submits comments in support of the Commission's Panel Discussions sponsored by the PCS Task Force held on April 11 and 12, 1994 regarding Personal Communication Services issues currently before the Commission. Calcell Wireless is a designated entity[1] based in Burlingame, California.

For the PCS licensing structure and process to be successful in achieving the Congressional mandate of "providing participation opportunities for designated entities", the Commission must develop a spectrum auction methodology that fulfills the following five objectives:

1) Ensure that designated entities end up as equity owners of licenses. This can most readily be accomplished through set-aside spectrum where designated entities bid against each other for licenses.

2) Provide assistance to designated entities in capital formation. Designated entities face significantly greater capital formation challenges than do other firms. The Commission can best assist in this area by allowing designated entities to pay for

[1] Calcell Wireless is an African-American owned firm and has sent comment to the FCC in the in both 1992 and 1993 as part of Docket No. 90-314.

their licenses using a combination of modest up front payments coupled with installment payments payable over the life of the license.

3) Provide incentives for non-designated entities to joint venture or partner with designated entities. Bid credits and select waivers of attribution spectrum limits when firms partner with designated entities will provide the necessary incentives.

4) Provide a license area, spectrum allocation and band location that does not disadvantage designated entities relative to other firms. Attractive opportunities for designated entities to acquire licenses must be available in desirable spectrum bands and territory sizes. In other words, avoid the possibility of creating a designated entity "spectrum ghetto" where designated entities have smaller territories, smaller bandwidth spectrum in the less desirable upper frequency band.

5) Provide differential preferences among designated entities based on their real differences in obtaining access to capital. Not all designated entities have equal access to capital. Groups that have historically had more difficulty accessing capital markets such as women and minority-owned companies should have stronger preferences than other designated entity categories. Capital gains tax deferring tax certificates which encourage investment in women and minority-owned PCS ventures and that also encourage others to sell their wireless licenses to women and minority-owned companies would accomplish this goal.

If the Commission succeeds in developing spectrum auction rules that accomplish these objectives, then it will have succeeded in creating real and meaningful opportunities in PCS for designated entities.

KEY QUESTIONS AND ANSWERS

Members of the PCS Task Force and others have asked two key questions regarding the ability of designated entities to effectively compete in PCS. Calcell poses and then answers these questions below.

Given that it will take a minimum of $12 to $15 million to acquire the license for a small BTA and to build a network to serve potential customers in the license territory, how can designated entities hope to raise the capital necessary to participate in PCS?

Minority-owned firms and other designated entities can and will participate in PCS through one or a combination of the following methods.

1. A pooling of resources among designated entities to form cooperative groups or consortia to acquire licenses and manage networks. By joining forces, firms will be able to combine resources and skills resulting in a combination where the whole is greater than the sum of the parts. For example, firms will be able to unite together and place equipment orders as a group to achieve economies of scale in purchasing. Alternatively, they may form specialized firms to perform certain functions such as branding and inter-territory roaming on a centralized basis. In fact, several groups have already emerged during the early pre-auction phase (Small Business PCS Association, American Wireless Communications, National Minority PCS Association, Coalition For Wireless Competition, National Association of Black Owned Broadcasters) to pursue opportunities on a combined basis.

2. A new class of individually oriented entrepreneurs will emerge. These entrepreneurs will be funded as will the cooperative groups through a combination of venture capital, Small Business Investment Companies, private placements of debt and equity, public stock offerings and personal wealth. Remember that success stories such as McCaw Communications or Cellular Communications Inc.[2] could not have been predicted when the cellular A block licenses were allocated by lottery in the early 1980s. Similarly, media success stories such as Inner City Broadcasting and Douglas Broadcasting would not have been possible without the preference programs established in the 1970s for media properties sold to minority firms.

   It took resourceful entrepreneurs with the foresight to put together winning business plans and marketing concepts. They used their visions to help persuade investors and capital market funding sources of the merits of their business propositions. Undoubtedly, new entrepreneurs will arise in PCS, comprised of visionaries that no one can identify with certainty at this point who recognize the business opportunities in PCS and who will develop the innovative business concepts that prove to be winning strategies in PCS. Calcell hopes to be one of these entrepreneurial firms. All these entrepreneurs need to succeed is a fighting chance. The currently proposed rules including set-aside spectrum for designated entities and installment financing for spectrum provide the "fighting chance" for designated entity entrepreneurs. However, these rules could be strengthened as proposed below.

3. A third means of designated entity participation will arise from the formation of partnerships and joint ventures with non-designated entities. Incentives that make it attractive for non-designated entities to ally or joint venture with designated entities

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[2] Cellular Communications has a joint venture with Air Touch Communications where CCI is the managing partner. They manage a service area that includes Detroit and much of southern and central Michigan and the major cities in Ohio.

will help create new business ventures with designated entities as key equity participants. These relationships can be fostered and encouraged by the rules the Commission adopts as incentives. For example, waiving of the attribution rules for cellular participation in situations where a non-controlling cellular license holder is just above the attribution rule limit when they team with designated entities as non-controlling partners would help spur alliances. The current structure with a mix of 30 MHz, 20 MHz and 10 MHz licenses also helps to spur alliances as the set-aside spectrum on either the 10 or 20 MHz band is needed by others to meet their strategic objectives in aggregating spectrum. The strongest incentives are those where the non-designated entity cannot obtain a position in a market or spectrum band unless they team with a designated entity.

At a minimum, the incentives proposed by the Commission need to be strong enough to overcome the inherent bias that large cellular companies have against entering into ventures with others where they are non-controlling partners. Let me illustrate, cellular companies entering transactions to buy or sell properties over the past five years have been willing to discount their non-controlling interests by 25 to 30% relative to similar interests in properties where they are the controlling party. In other words, if the per pop transaction price in a given market for a 51% interest is $200 per pop, a 20% interest in the same market would be worth $140 to $150 per pop. A review of the price per pop transaction data for cellular transactions such as that assembled by firms like Paul Kagan and Associates involving controlling and non-controlling properties bears this information out.

With this inherent bias in place against non-controlling transactions with non-designated entities, imagine the discount per pop necessary to complete a non-controlling transaction with a designated entities. As a result, any incentive system proposed by the FCC that includes a bid credit for designated entities must be greater than 25 to 30% to provide any incentive for non-designated entities to take a non-controlling position with a designated entity.

In summary, designated entities will have the ability to finance smaller systems as individual companies, alternatively they can band together or ally with non-designated entity firms as means of executing their PCS strategy. Some of the larger minority and women owned businesses with revenues of $20 million or more will be in a strong position to go it alone and could even successfully pursue a large BTA license such as Los Angeles or New York. For example, a 20% down payment on a $175 million bid would amount to $35 million. This could be raised through a combination of venture, debt and equity capital, plus the net worth of the company owners and management.

The network could be financed largely with the assistance of equipment suppliers. After the first year or two of holding the license and while the network is being completed, additional capital could be raised through a public offering to further fund anticipated start-up costs. This method of finance is quite similar to that used by many cellular licensees and ESMR companies in the recent past. Raising the necessary capital would be even easier if the minority-owned company aligned itself with a major non-designated entity partner who held a non-controlling interest. Clearly, dozens of minority and women owned companies exist that have the wherewithal to raise the necessary capital to acquire licenses at the PCS auctions and then to build out the network required for large BTA's. The FCC could receive bids totaling $1 to $2 billion on the 20 MHz block of designated entity spectrum alone if the current rules remain. Assembling the $200 to $400 million necessary for the up front payments for the auction will not be a major challenge when spread across all designated entities.

What rules or incentives should the FCC adopt as policy to provide designated entities with a reasonable opportunity to participate in PCS?

If the FCC's defines creating a reasonable opportunity for designated entities to include the emergence of designated entities that have equity interests in PCS properties and who keep those interests over a long period of time (10 years or more), then set-aside spectrum must be part of those incentives. Only through set-aside spectrum can the FCC be reasonably assured that designated entities will actually end up as equity holders of PCS licenses. Other programs such as bidding credits will not assure meaningful designated entity participation unless the bid credits are sufficiently large to overcome the 25% plus premium that exists in cellular properties for controlling versus non-controlling interests in cellular licenses. A review of the historical transaction record for trades of cellular properties over the last five years or so provides ample and compelling evidence that majority owned companies will not pursue non-controlling relationships with anyone (even another majority owned company) without discounting the value of that relationship by 25% or more. Therefore, one must conclude that absent a bidding advantage of 25% or more, majority owned companies will not enter into relationships with designated entities where they are non-controlling parties.

The largest single hurdle that designated entities face is a capital formation challenge. The capital formation challenge is most critical for minority and women entrepreneurs. While the capital markets will provide capital to designated entities if they believe that the designated entity entrepreneurs have a high likelihood of success, incentives will help increase the availability of capital. One of the best incentives available to spur investment are capital gains deferring tax certificates for firms and individuals who invest in minority owned PCS ventures. If they can defer their capital gains tax upon exiting the deal it substantially increases their incentive to invest in the transaction.

Below we outline the five key policy objectives followed by high level policy recommendations that will provide opportunity for designated entities and incentives for non-designated entities to partner with designated entities.

Objectives

1) <u>Ensure that designated entities end up as equity owners of licenses</u>.
2) <u>Provide assistance to designated entities in capital formation.</u>
3) <u>Provide incentives for non-designated entities to joint venture or partner with designated entities.</u>
4) <u>Provide a license area, spectrum allocation and band location that does not disadvantage designated entities relative to other firms</u>.
5) <u>Provide differential preferences among designated entities based on their real differences in obtaining access to capital</u>.

Preferences

1. Set-aside two blocks of spectrum for designated entities with one block in the lower band

    - The Commission must set-aside spectrum for designated entities to ensure that these groups will be able to secure the required financing and emerge from the auction as license holders. Extending limited designated entity bidding credits to all bands and eliminating the set-aside bands as some have advocated in their petitions for reconsideration will not be enough to ensure participation from women and minority-owned businesses.

- At least one designated block should be in the lower 80 MHz to minimize any disadvantages to designated entities in receiving timely equipment deliveries.

2. Designated entity bidding preferences should be extended to all other spectrum Blocks

   - Use of installment payments or royalties
   - Use of tax certificates for minority owned businesses
   - Low up front deposit required to participate in the bidding
   - Bidding credits of up to 30%

3. The Commission should adopt the Calcell Wireless proposal for infrastructure preferences for the designated entity bands (see next section)

Eligibility

1. Eligibility requirements for minority status should include the following:

   - Minority groups the FCC has traditionally recognized and as proposed by the SBAC

   - A minimum of 50.1% voting control, and 20% equity ownership, by members of qualified ethnic minority groups, plus a minority as company head required for definition as a minority company

2. Eligibility requirements for women-owned status should include 50.1% equity ownership and voting control, plus a woman as company head.

3. Cellular and LEC prohibitions against owning more than a 10 MHz license where they have a qualifying interest in a 25 MHz cellular license should be waived and increased to 20 MHz if they partner with up to 49.9% ownership in ventures controlled by women or minority-owned businesses.

Rules

1. We recommend that the Commission adopt simple rules to maximize participation among designated entities (e.g., oral sequential bidding, uniform license territories, simple application requirements)

2. Firms should be allowed to aggregate all BTAs in a MTA by bidding for all simultaneously

3. Initial deposits and fees for designated entities should be kept low to help ensure strong participation among designated entities.

   - An initial deposit of 20% of that proposed for other bidders
   - Allow 30-45 days after the award of the license for firms to complete their up front payment

4. Installment payments for minority-owned firms should be payable over the 10 year life of the license with principal payments deferred for the first three years to assist with network financing and start-up costs.

5. Designated entities should be able to resell their licenses without unjust enrichment penalties once one-third of the population in a given license area is served.

6. The entity who holds the license must be involved in actually operating the license and there should be rules to prohibit fronting where non-designated entities pose as designated entities.

INFRASTRUCTURE PREFERENCES

Calcell Wireless, Inc. has developed and recommended to the Commission a concept called Infrastructure Preferences that would provide incentives to private enterprise to rebuild the Communications Infrastructure of America's inner cities and rural areas including them as part of the wireless superhighway. These incentives would be tied to the auctioning of Personal Communications Services (PCS) licenses.

Calcell's specific recommendation is to have the Commission designate band C, as the Infrastructure Preference band. Infrastructure Preferences represent a type of "Innovator's preference" that not only provides ownership participation opportunities for designated groups, but also provides incentives for them to train and employ disadvantaged individuals, and source capital equipment from women and minority owned firms.

Companies awarded Infrastructure Preferences would make specific and measurable commitments to rebuild America's inner cities by locating in designated enterprise zones and employing and training socially and economically disadvantaged workers. This commitment would last over the ten year life of the license and be renewable annually to ensure steady, long-term improvement in the plight of the disadvantaged. As an incentive for achieving the specific infrastructure preference objectives, eligible firms would receive a significant credit (up to 30%) on their bid for a PCS license.

Race or gender need not be a basis for receiving an infrastructure preference as all businesses whether large or small, women or minority owned could potentially be eligible for the preference.

Criteria For Infrastructure Preference Eligibility

Overall Objectives	• A commitment by the preference holder to: - Revitalize designated enterprise zones and other impoverished inner city or rural areas[3] - To provide a wireless communications infrastructure in these areas at an expedited pace.
Performance Objective	• PCS service will be provided in designated enterprise zone areas one full year ahead of the FCC mandated build-out requirements for the overall territory covered by the license.
Economic Opportunity Objectives	• The headquarters for the PCS license holder will be located within the boundaries of a designated enterprise zone. • 50% of the branch offices of the license holder will be located in designated enterprise zones, or 50% of the total workforce will be employed in company locations within designated enterprise zones. • Infrastructure preference holders will agree to employ a work force that reflects the demographics of its licensed market and includes racial minorities as a percentage of the total workforce equal to or greater than their percentage of the overall population in the licensed market. • The license holder will dedicate at least 1% of its annual operating budget to specific education and job training programs for socially and economically disadvantaged employees. • The license holder will award 10 percent of its capital expenditures and supply contracts to firms owned by women and racial minorities, with a minimum of 5 percent of the total purchases from minority-owned firms.

[3] In some rural trading areas there may not be any designated enterprise zones. In such cases Calcell suggests defining other impoverished areas as the locations to meet requirements specified for designated enterprise zones. Criteria should center on helping areas with unusually high unemployment rates and with per capita incomes of 70% or less of the trading area as a whole. Local economic development agencies could define such zones prior to the auctions.

Benefits Awarded to Infrastructure Preference Holders

In exchange for committing to the infrastructure preference requirements listed above, eligible firms would receive the following benefits:

- The payment terms of the winning bid would be substantially different for the infrastructure preference holder. Such a license holder would receive a bidding credit of 30% and be able to pay their "winning bid" for the license made at the competitive bidding auction in installments over the 10 year life of the license.

- The deposit rules for bidding in the designated entity band would apply to companies requesting an infrastructure preference. For example, a non-refundable 10% deposit might be required up front for a winning bid if the same deposit were required for other designated entities participating in the auction.

- The preference holder would be expected to provide evidence that they are in compliance with the infrastructure preference requirements annually, approximately 30 days preceding the timing of each additional installment payment. Compliance monitoring would be conducted by the local economic development agency.

- If a company fails to meet one or more of the infrastructure preference requirements after having been granted an infrastructure preference, then full payment of the bid credit amortized at 3% annually plus interest for that year would be required. However, the company may apply for a special hardship exemption if failure to comply is caused by extenuating circumstances. In this case the monitoring agency would decide whether to require full payment or seek only partial payment if it deems the application for hardship worthy.

- The rules for the bidding credit will remain in effect even if a company changes management or ownership as long as the new owners continue to meet the infrastructure preference requirements.

- If a firm or group submits winning bids on multiple licenses and receives infrastructure preferences for multiple licenses, then the infrastructure preference requirements apply to all of the licenses held by the company or entity on a combined basis, rather than for each individual license. At its option, a preference holder could ask to be evaluated on a license by license basis.